

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JONATHAN HARRIS,

Plaintiff,

-against-

CITY OF NEW YORK; Detective BRIAN TAYLOR,
Shield No. 4438; Police Officer NEIL MAGLIANO, Shield
No. 2766; Police Officer SEAN NOCE, Shield No. 31328;
Detective JUSTIN PARRIS, Shield No. 22965; Detective
DOMINGO AYALA, Shield No. 10854; and JOHN and
JANE DOE 3 through 10,

Defendants.

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**ANSWER TO THE SECOND
AMENDED COMPLAINT BY
DEFENDANTS CITY,
TAYLOR, MAGLIANO,
NOCE PARRIS AND AYALA**

15 CV 8456 (CM) (RLE)

JURY TRIAL DEMANDED

Defendants City of New York, Detective Brian Taylor, Police Officer Neil Magliano, Police Officer Sean Noce, Detective Justin Parris and Detective Domingo Ayala by their attorney Zachary W. Carter, Corporation Counsel of the City of New York, for their answer to the Amended Complaint, respectfully allege, upon information and belief, as follows:

1. Deny the allegations set forth in paragraph “1” of the Amended Complaint, except admit that plaintiff purports to bring this action as stated therein.

2. Deny the allegations set forth in paragraph “2” of the Amended Complaint, except admit that plaintiff purports to bring this action as stated therein.

3. Deny the allegations set forth in paragraph “3” of the Amended Complaint, except admit that plaintiff purports to invoke the jurisdiction of the Court as stated therein.

4. Deny the allegations set forth in paragraph “4” of the Amended Complaint, except admit that plaintiff purports to base venue as stated therein.

5. Paragraph “5” of the Amended Complaint is a demand for a jury trial for which no response is required.

6. Deny knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph “6” of the Amended Complaint.

7. Deny the allegations set forth in paragraph “7” of the Amended Complaint except admit that the City of New York is a municipal corporation duly organized under the laws of the State of New York and that the City of New York maintains a police department, and respectfully refer the Court to the New York City Charter and Administrative Code for a recitation of the relationship between the City of New York and the New York City Police Department.

8. Deny the allegations set forth in paragraph “8” of the Amended Complaint but admit that Brian Taylor is employed by the City of New York and is a member of the New York City Police Department.

9. Deny the allegations set forth in paragraph “9” of the Amended Complaint but admit that Neil Magliano is employed by the City of New York and is a member of the New York City Police Department.

10. Deny the allegations set forth in paragraph “10” of the Amended Complaint but admit that Sean Noce is employed by the City of New York and is a member of the New York City Police Department.

11. Deny the allegations set forth in paragraph “11” of the Amended Complaint but admit that Justin Parris is employed by the City of New York and is a member of the New York City Police Department.

12. Deny the allegations set forth in paragraph “12” of the Amended Complaint but admit that Neil Magliano is employed by the City of New York and is a member of the New York City Police Department.

13. Deny the allegations set forth in paragraph “13” of the Amended Complaint but admit that Domingo Ayala is employed by the City of New York and is a member of the New York City Police Department.

14. Deny knowledge and information sufficient to form a belief as to identity of the John and Jane Doe defendants set forth in paragraph “14” of the Amended Complaint.

15. Paragraph “15” sets forth conclusions of law to which no response is required.

16. Deny knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph “16” of the Amended Complaint.

17. Deny the allegations set forth in paragraph “17” of the Amended Complaint.

18. Deny the allegations set forth in paragraph “18” of the Amended Complaint.

19. Deny the allegations set forth in paragraph “19” of the Amended Complaint but admit plaintiff was arrested and charged with criminal possession of a weapon on May 7, 2015.

20. Deny the allegations set forth in paragraph “20” of the Amended Complaint.

21. Admit the allegations set forth in paragraph “21” of the Amended Complaint.

22. Deny the allegations set forth in paragraph “22” of the Amended Complaint.

23. Deny the allegations set forth in paragraph “23” of the Amended Complaint except admit that plaintiff was issued a desk appearance ticket on May 8, 2015.

24. Deny the allegations set forth in paragraph “24” of the Amended Complaint except admit the District Attorney’s Office declined to prosecute plaintiff on June 2, 2015.

25. Deny the allegations set forth in paragraph “25” of the Amended Complaint.

26. In response to the allegations set forth in paragraph “26” of the Amended Complaint, defendants repeat and reallege the responses set forth in the preceding paragraphs of this answer as if fully set forth herein.

27. Deny the allegations set forth in paragraph “27” of the Amended Complaint.

28. Deny the allegations set forth in paragraph “28” of the Amended Complaint.

29. In response to the allegations set forth in paragraph “29” of the Amended Complaint, defendants repeat and reallege the responses set forth in the preceding paragraphs of this answer as if fully set forth herein.

30. Deny the allegations set forth in paragraph “30” of the Amended Complaint.

31. Deny the allegations set forth in paragraph “31” of the Amended Complaint.

32. In response to the allegations set forth in paragraph “32” of the Amended Complaint, defendants repeat and reallege the responses set forth in the preceding paragraphs of this answer as if fully set forth herein.

33. Deny the allegations set forth in paragraph “33” of the Amended Complaint.

34. Deny the allegations set forth in paragraph “34” of the Amended Complaint.

35. Deny the allegations set forth in paragraph “35” of the Amended Complaint.

36. Deny the allegations set forth in paragraph “36” of the Amended Complaint.

37. In response to the allegations set forth in paragraph “37” of the Amended Complaint, defendants repeat and reallege the responses set forth in the preceding paragraphs of this answer as if fully set forth herein.

38. Deny the allegations set forth in paragraph “38” of the Amended Complaint.

39. Deny the allegations set forth in paragraph “39” of the Amended Complaint.

40. Deny the allegations set forth in paragraph “40” of the Amended Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE:

41. The Amended Complaint fails to state a claim upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE:

42. There was probable cause for plaintiff’s arrest, detention and prosecution.

AS AND FOR AN THIRD AFFIRMATIVE DEFENSE:

43. At all times relevant to the incident, Defendant City of New York and its employees and officials acted reasonably and in the proper and lawful exercise of their discretion. As such, Defendant City of New York is entitled to governmental immunity.

AS AND FOR AN FOURTH AFFIRMATIVE DEFENSE:

44. Plaintiff cannot obtain punitive damages against defendant City of New York.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE:

1. Plaintiff has no standing to seek injunctive and or declaratory relief.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE:

2. Plaintiff may have failed to comply with conditions precedent to suit.

AS AND FOR AN SEVENTH AFFIRMATIVE DEFENSE:

3. To the extent plaintiff alleges state law claims, plaintiff may have failed to comply with New York General Municipal Law §§ 50(e) and 50(i), et seq.

AS AND FOR An EIGHTH AFFIRMATIVE DEFENSE:

4. Plaintiff has failed to comply with certain conditions precedent to suit.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE:

5. The Individual Defendants have not violated any clearly established constitutional or statutory right of which a reasonable person would have known and therefore are protected by qualified immunity.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE:

6. At all times relevant to the acts alleged in the Amended Complaint, the Individual Defendants acted reasonably in the proper and lawful exercise of their discretion.

WHEREFORE, Defendants City of New York, Detective Brian Taylor, Police Officer Neil Magliano, Police Officer Sean Noce, Detective Justin Parris and Detective Domingo Ayala respectfully request judgment dismissing the Amended Complaint in its entirety, together with the costs and disbursements of this action, and such other and further relief as the Court may deem just and proper.

Dated: New York, New York
March 8, 2017

ZACHARY W. CARTER
Corporation Counsel of the
City of New York
*Attorney for Defendants City, Taylor, Magliano,
Noce, Parris and Ayala*
100 Church Street, Room 3-208
New York, New York 10007
(212) 356-2656

By: /s/
Paul H. Johnson
Assistant Corporation Counsel
Special Federal Litigation Division

TO: Gabriel Harvis, Esq. (**via ECF**)
Attorney for Plaintiff
305 Broadway, 14th Floor
New York, New York 10007

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**ANSWER TO THE AMENDED COMPLAINT BY
DEFENDANTS CITY, TAYLOR, MAGLIANO,
NOCE, PARRIS AND AYALA**

ZACHARY W. CARTER

*Corporation Counsel of the City of New York
Attorney for Defendant City
100 Church Street Rm 3-208
New York, New York 10007*

*Of Counsel: Paul H. Johnson
Tel: (212) 356-2656*

Due and timely service is hereby admitted.

New York, N.Y., 2016 . . .

..... Esq.

Attorney for

